



THE PUBLIC BUILDINGS DEPARTMENT

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NEWTON HIGHLANDS, MA 02461

Setti D. Warren  
Mayor

March 1, 2011

Enclosed please find the information package which includes the Designer Selection Committee Questionnaire and a Statement of Objectives, which outlines the basic scope of services desired by the City of Newton Public Buildings Department to provide architectural, asbestos abatement, structural, plumbing, fire protection, mechanical and electrical engineering services for the alterations and renovations to F.A. Day Middle School, 21 Minot Place, Newtonville, MA 02460. The project includes the addition or creation of six classrooms, expansion of the cafeteria, and improved security at the Minot Street entrance.

You are requested to submit a response to the questionnaire. Concise, succinct proposals are appreciated. Please submit only that information which you feel is pertinent to the work for which you are applying and the designer selection process.

This RFQ is one of a series of projects to be issued by the City of Newton. Potential firms are encouraged to submit their Qualifications for any or all of the projects. Selection of a firm for one of these projects does not preclude the firm from being selected for another of the projects.

Please submit (20) twenty copies of the completed questionnaire, and copy of the Tax Attestation Statement with Certificate of Corporate Authority **no later than 2:00 p.m. on April 7, 2011** to:

Joseph Michelson, Chairman  
Designer Selection Committee  
C/O Donna Anastasia  
Public Buildings Department  
52 Elliot Street  
Newton Highlands, MA 02461  
Telephone (617) 796-1600

Questions may be directed, in writing, to the City of Newton Purchasing Department at [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) **no later than 5:00 p.m. April 1, 2011**. Written responses to the Questions received will be distributed to all individuals and firms requesting a copy of this RFQ **no later than April 5, 2011 at 12:00 noon**.

## ARCHITECTURAL SERVICES PROJECT INFORMATION PACKAGE

### **Statement of Objectives**

The City of Newton, through its Designer Selection Committee, is currently seeking expressions of interest from individuals and firms for professional services for the following work funded through the City's Public Buildings Department.

Provide architectural, asbestos abatement, structural, plumbing, fire protection, mechanical and electrical engineering services for the renovations and alterations at F.A. Day Middle School, 21 Minot Place, Newtonville, MA 02460. The range of services shall include, but not be limited to, the preparation of schematic design, design development, construction drawings and documents, bidding and construction supervision.

The City of Newton School Department enrollment projections indicate the imminent need for six additional classrooms at F.A Day Middle School. To address this need, the School Department commissioned a Space Study Analysis of the building by Raymond Design Associates to (1) identify potential areas for expansion and/or renovation, (2) consider both permanent and modular construction options, and (3) review construction feasibility on a very restricted site.

The final space analysis report for F.A. Day Middle School may be found on the School Department Web Site at [www3.newton.k12.ma.us/schoolcommittee](http://www3.newton.k12.ma.us/schoolcommittee) under short term space issues:

- Board of Aldermen Presentation 11-10-10.

The Space Study progressed the project through programming and the development of three preferred conceptual alternatives that meet the City of Newton School Department educational program needs. It is intended that these three schemes shall be the starting point for this project, to be reviewed and verified by the selected consultant. The schemes have not yet had a full design analysis to determine if the current building systems will sustain these schemes.

The architect shall ensure that the project complies with all applicable codes, rules and regulations, including but not limited to, the latest Massachusetts State Building Code, currently the 7<sup>th</sup> Edition, but soon to be the 8<sup>th</sup> Edition, including the recently adopted "Stretch" Energy Code, the rules and regulations of the Architectural Access Board, and the Americans with Disabilities Act, as applicable, for a construction project whose initial construction will begin on or about March 1, 2012. Final design for the project shall be completed on or before September 1, 2011.

**A project briefing will be held at Newton City Hall, Room 202, 1000 Commonwealth Avenue, Newton, MA 02459 on March 31, 2011 at 10:00AM.**

**Disclosure**

The questionnaire submitted in response to this advertisement will be considered the property of the City of Newton, and may be utilized as deemed appropriate by the City. Should the offeror desire that certain data within the questionnaire not be utilized for purposes other than within the Questionnaire, such data shall be identified on the cover page of the Questionnaire with the written provision that if a contract is awarded as a result of this Questionnaire, the City of Newton shall have the right to use or disclose such data as deemed appropriate. Unless restricted as above, information submitted in response to this request may become subject to disclosure to the public pursuant to the provisions of the Massachusetts Public Records law.

**Minority Outreach**

Qualified minority individuals and firms are encouraged to submit expressions of interest.

**Equal Opportunity Requirements**

Offerors are hereby advised that submission of a signed questionnaire in response to this advertisement will be deemed to express the intent to comply in all respects with the following non-discrimination provisions as applicable:

Title VI, Civil Rights Act of 1964, as amended.

Title VII, Civil Rights Act of 1968, as amended.

**State Tax Requirements**

As required by Chapter 233, Acts of 1983, the successful consultant will be required to sign an attestation form certifying that all state tax returns have been filed and all state taxes paid. Offerors are advised that submission of a signed questionnaire in response to this advertisement will be deemed to express the offeror's intent to comply with Massachusetts statutes.

## TABLE OF CONTENTS

### I. Information to Applicants

### II. Commonwealth of Massachusetts DSB Application Form

Attachment A	Designer Selection Committee Minimum Qualifications, Selection Criteria and Submission Requirements
Attachment B	Tentative Schedule for Selection Process
Attachment C	Draft Agreement
Attachment D	City of Newton, Designer Selection Procedures

## INFORMATION FOR APPLICANTS

1. Applicants may direct written Questions regarding the selection process and/or the Questionnaire no later than 5:00 p.m., **April 1, 2011** to:

City of Newton Purchasing Department  
[purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)  
617-796-1220

The City will make best efforts to give written Responses to the Questions to all individuals or firms requesting a copy of this RFQ no later than **April 5, 2011**.

2. To receive Addenda or Responses to Questions that may be issued, Applicants are requested to register with City of Newton Purchasing Department at above email address.
3. Applicants must submit twenty (20) copies of the completed Questionnaire and any additional information no later than 2:00 p.m. **April 7, 2011** to:

Joseph Michelson, Chairman  
Designer Selection Committee  
C/O Donna Anastasia  
Public Buildings Department  
52 Elliot Street  
Newton Highlands, MA 02461  
Telephone (617) 796-1600

In addition to the twenty (20) copies of the completed Questionnaire, Applicants are requested to include a CD containing their submission. Applicants are advised that the submissions may be posted on the City of Newton's website.

Applicants are reminded that the Questionnaire must be signed and must be accompanied by signed Sub-consultant Acknowledgements for each listed sub-consultant. Failure to supply a signed and completed Questionnaire and Sub-consultant Acknowledgement may result in rejection of the Applicant's submission.

4. The Questionnaire submitted in response to this RFQ will be considered the property of the City of Newton, and may be utilized as deemed appropriate by the City.
5. The Designer Selection Committee reserves the right to waive minor informalities, to request additional information if necessary to clarify the information contained in the Questionnaire, and/or to reject all completed Questionnaires received and to terminate the RFQ as may serve the best interests of the City.

6. The fee has not been set, but will be subject to negotiations based on the Commonwealth of Massachusetts Designer Fee Guidelines.
7. **MBE/WBE Goals.** In accordance with the requirements of Chapter 193 of the Acts of 2004, the Design contract for the Project will include MBE/WBE goals. DCAM has established minimum goals of 8% MBE participation and 4% WBE participation for the value of the Design contract. MBE/WBE goals must be met within the list of requested prime and sub-consultants. All Applicants must indicate how they intend to meet these goals. The Architect selected for the Project must complete a Schedule For Participation by MBE/WBE subcontractors prior to execution of the Design contract. The Schedule For Participation does not have to be filed with the Questionnaire.
8. The City of Newton reserves the right, in its sole discretion, to reduce or waive the MBE/WBE goals for the Project after selection of the Architect and before execution of the Design contract, provided that no such reduction or waiver shall be granted except under the following circumstances: the selected Architect must establish and document to the satisfaction of the City that it has been unable to obtain commitments from MBE/WBE subcontractors possessing the requisite professional skills sufficient to meet the MBE/WBE goals for the Project after having made a diligent, good faith effort to do so. The Architect must submit documentation with its request for a reduction or waiver setting out the diligent and good faith efforts made by it to obtain commitments from MBE/WBE subcontractors. If the Architect fails to submit an appropriate Schedule of MBE/WBE Participation establishing that the MBE/WBE participation goal for the Project will be met, or fails to receive a reduction or waiver of such goals from the City following documentation of its diligent and good faith efforts to obtain commitments from MBE/WBE subcontractors, the City may consider the Architect ineligible for award of the Design contract.

## Attachment A

### DESIGNER SELECTION COMMITTEE MINIMUM QUALIFICATIONS, SELECTION CRITERIA AND SUBMISSION REQUIREMENTS

#### I. Minimum Qualifications:

All firms must possess the following minimum qualifications:

1. Massachusetts Registration and licensing in all applicable disciplines.
2. Thorough knowledge of procedures, requirements, and practices of Division of Capital Asset Management (DCAM) and other agencies related to the design and construction of municipal buildings.
3. Thorough knowledge of Massachusetts State Building Codes and regulations of the Architectural Barriers Board.
4. Thorough knowledge of and familiarity with the public design and construction laws of the Commonwealth of Massachusetts and the requirements thereof.
5. Sufficient levels of staff to complete this project.
6. Must have prior to signing of the contract:
  - a. Professional Liability Insurance in the amount of 10% of the fee for the Project, or \$1,000,000.00, whichever is greater.
  - b. Worker's Compensation Insurance
  - c. General Liability Policy in an aggregate amount of \$500,000 or greater naming the City of Newton as an additional insured.
7. Must have prior experience in designing both new and renovated municipal buildings for a minimum of ten years.
8. Must identify to the City any persons, specialists, and individual consultants for this project.
9. Demonstrated knowledge of high performance and sustainable building for new and existing facilities.

## II. Selection Criteria

The Designer Selection Committee will use the following criteria to select Semi-finalists and Finalists:

1. Prior similar experience best illustrating current qualifications to provide requested services.
2. Identity and qualifications of the key persons and consultants who will work on the Project.
3. Depth of the Firm with respect to size and complexity of the Project.
4. Past performance on public and private projects.
  - a. Quality, clarity, completeness and accuracy of construction documents.
  - b. Effectiveness of meeting established program requirements and function within allotted budget.
  - c. Accuracy of cost estimates and ability to provide multiple options for meeting facilities needs.
  - d. Management ability to meet schedules.
  - e. Coordination and management of consultants.
  - f. Working relationship with consultants and Owners.
5. Financial stability – including prompt payment of consultant fees.
6. Current total workload with private and public agencies.
7. Geographical location of the Firm and consultants with respect to the Project.
8. Review of previously completed similar projects for other communities, if submitted by the applicant.
9. Ability of Firm to work with all stakeholders in a complex public project, including but not limited to, public officials, and boards and committees of the City of Newton.
10. Ability of Firm to consider High Performance building and life cycle costing and to undertake innovative approaches to design and site challenges that seek to optimize sustainability.



### III. Submission Requirements

Each firm desirous of consideration will submit the following:

1. The applicant must complete and sign the Questionnaire.
2. Background data on all firms with a role in the project.
3. Resumes of the Principals of firms who will be assigned to the project and will be taking an active part therein.
4. Examples of projects completed (within the past five [5] years) of comparable size and complexity.
5. At least five (5) references of persons who are familiar with your work (and City is to have express permission to contact either in person, by phone, and/or correspondence as to past performance).

## Attachment B

### DESIGNER SELECTION COMMITTEE

#### TENTATIVE SCHEDULE FOR SELECTION PROCESS

The following is the tentative schedule for the Selection Process. Please note, this Schedule is subject to change by the Designer Selection Committee ("DSC"). Interested parties should check with the Newton Public Buildings Department to see if there have been revisions to this tentative schedule and for the exact times and locations of all DSC meetings.

March 24, 2011	RFQ available
March 31, 2011	Briefing Session, 10:00 a.m. Newton City Hall. Room 202 1000 Commonwealth Avenue Newton, MA 02459
April 1, 2011	Written Questions, if any, due by 5:00 p.m.
April 5, 2011	Anticipated date for Response to Written Questions by 12:00 noon.
April 7, 2011	Applicants submit completed Questionnaires and Sub-consultant Acknowledgements, due by 2:00 p.m.
April 2011	Review references prior to DSC Semi-Finalists selection meeting
April 2011	DSC meets to review submissions and select Semi-Finalists
April 2011	DSC meets to interview Semi-Finalists and select and rank finalists

All meetings will be open to the public. The DSC will provide an opportunity for public comment.

Attachment C

**DRAFT**  
AGREEMENT FOR ARCHITECTURAL SERVICES  
FOR DESIGN OF ALTERATIONS AND  
RENOVATIONS TO THE F.A. DAY MIDDLE SCHOOL,  
21 MINOT PLACE, NEWTONVILLE , MA 02460

This AGREEMENT made this day of \_\_\_\_\_ in the year Two Thousand Eleven and between  
XXXXXX, Inc.

a corporation organized and existing under the laws of the Commonwealth of Massachusetts and  
having a usual place of business is hereinafter referred to as the “ARCHITECT”, and the

CITY OF NEWTON

A municipal corporation organized and existing under the laws of the Commonwealth of  
Massachusetts referred to as the CITY.

It is the intention of the City to compensate the Architect as provided under the terms and  
conditions of this Agreement as consideration for the design and contract administration services of  
the Architect for the alterations and renovations to the F.A. Day Middle School. 21 Minot Place,  
Newtonville, MA 02460.

The City and Architect agree as set forth below.

- I. The ARCHITECT shall provide professional services in accordance with the Terms and Conditions of this Agreement. The Architect and its Consultants shall perform the Services under this Agreement in accordance with the high professional standards of skill and care generally exercised by qualified architects and engineers in the greater Boston, Massachusetts area on projects of similar scope, complexity and visibility as of the date of performance of the Services. The Architect shall be responsible for all Services performed by the Consultants.
- II. The CITY shall compensate the Architect, in accordance with Schedule B, attached hereto and made a part hereof.
- III. The Architect shall perform its duties in accordance with and mindful of all laws of the Commonwealth of Massachusetts and Ordinances of the City of Newton and particularly Article IV Section 5-54, which is entitled The Design Review Committee. Included is the requirement that the Architect shall prepare and submit site plans in accordance with procedures outlined in Section 5-58 of the Revised Ordinances of Newton Massachusetts 2007, if applicable. See Sections 5-54 through 5-58, herein incorporated in this contract as Schedule E.

- IV. The Architect's Basic Services shall also include appearances before the Design Review Committee and all other boards and committees of the City in connection with the seven phases set forth below, for which no additional compensation shall be given.

1.0 BASIC ARCHITECTURAL SERVICES

- 1.1 The Architect's Basic Services shall be focused on, but not limited to, the development of architectural programming and site analysis for the proposed additions and renovations to the F.A. Day Middle School, 21 Minot Place, Newtonville, MA 02460.
- 1.2 The Architect's Basic Services consist of seven (7) phases described below and include architectural, structural, plumbing, fire protection, heating, ventilating, air conditioning, mechanical and electrical engineering services, special lighting, acoustical, and asbestos services to the satisfaction of the City, represented by its Public Buildings Commissioner. The Architect shall be responsible for the quality of all consultants' work.

2.0 PHASE I - WORK PLAN

The selected architect is expected to meet with key members of various City of Newton departments throughout the design process. A proposed work plan and sequence of the activities for each component is to be prepared.

Duration: one (1) weeks

3.0 PHASE II - UPDATED SITE AND ENVIRONMENTAL ANALYSIS/ARCHITECTURAL PROGRAMMING

- 3.1 The Architect shall prepare a site and environmental analysis and architectural programming as required consisting of drawings, reports and other documents illustrating the characteristics of both site and structures and relationships of same, for approval by the City and shall submit, twenty (20) copies of each drawing and document to the City at his expense. The Architect shall also provide an electronic copy of all documentation.

**ARCHITECTURAL PROGRAM VERIFICATION:** The Architect is to provide the services required to establish the following detailed requirements for the project:

- A. Objectives, limitations and criteria.
- B. Space requirements.
- C. Space relations and relationships.
- D. Number and functional responsibilities of personnel.
- E. Flexibility and expandability.
- F. Special equipment and other systems.
- G. Site requirements and needs.
- H. Space/flow diagrams and pertinent descriptive texts.
- I. Existing facility survey including site.
- K. Project cost estimate.

- L. Project development scheduling.
- M. Project budgeting.
- N. Building and Zoning Code analysis.
- O. ADA requirements and analysis, if applicable.

- 3.2 The updated site and environmental analysis and architectural programming report, as referenced in 3.1 shall be submitted to the City after acceptance of the Work Plan. The City's written approval of the site and environmental analysis and architectural programming must be received by the Architect before Phase III may start.

Duration: three (3) weeks

#### 4.0 PHASE III - SCHEMATIC DESIGN

- 4.1 The Architect shall prepare from the approved site and environmental analysis and other data, Schematic Designs consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the City.
- 4.2 The architect will be required to prepare detailed room data sheets and diagrams establishing necessary adjacencies and proximities, as appropriate.
- 4.3 The architect will program any site development when appropriate, including pedestrian and vehicular circulation, including associated lighting.
- 4.4 Alternatives for Building & Site Development will be prepared.
- 4.5 The Architect shall submit to the City a statement of probable construction costs, prepared by a professional estimator, for the Project, based on current area, volume and other costs.
- 4.6 The Schematic Design and probable construction costs shall be submitted to the City after approval of the site and environmental analysis. Approval of the Schematic Design and probable construction costs must be accepted and approved by the City in writing before Phase IV may begin.
- 4.7 The Architect shall provide twenty (20) copies of each drawing and document to the City at his expense. The Architect shall also provide an electronic copy of all documentation.

Duration: four (4) weeks

#### 5.0 PHASE IV - DESIGN DEVELOPMENT

- 5.1 The Architect shall prepare from the approved program and Schematic Design, for approval by the City, the Design Development Documents consisting of drawings, specifications and other documents to establish and describe the size and character of the Project as to

architectural, structural, mechanical and electrical systems, materials, and such other essential back-up as may be appropriate.

- 5.2 The Architect shall submit to the City, at the end of the Design Development Phase, a Statement of Estimated Construction Cost prepared by a professional estimator. Cost shall not exceed the mutually agreed upon maximum construction cost.
- 5.3 Design Development Documents and Probable Construction Costs shall be submitted to the City after approval of Schematic Design. Approval in writing by the City must be received before Phase IV may commence.
- 5.4 The Architect shall supply twenty (20) copies of each drawing and other documents to the City at his expense. The Architect shall also provide an electronic copy of all documentation.

Duration: four (4) weeks

#### 6.0 PHASE V - CONSTRUCTION DOCUMENTS

- 6.1 The Architect shall prepare from the approved Design Development Documents, for approval by the City, Working Drawings and Specifications setting forth in detail the requirements for the construction of the Project including the necessary bidding information, and shall assist in the preparation of bidding forms, filed sub-bids, the Conditions of the Contract, and the form of Agreement between the City and the Contractor.
- 6.2 The drawings shall be in such detail as will show clearly the form, size, material, and arrangements of the various parts, all as is customarily required in contracts for the proper construction of the work. The designs shall conform to the latest Commonwealth of Massachusetts State Building Code, currently the 7<sup>th</sup> Edition, but soon to be 8<sup>th</sup> Edition, as well as the recently adopted "Stretch" energy code.
- 6.3 The Architect shall advise the City of any adjustments to previous Statements of Estimated Construction Cost indicated by changes in requirements or general market conditions and shall provide a detailed cost estimate prepared by a professional cost estimator.
- 6.4 The Architect shall assist the City in filing the required documents for the approval of governmental authorities having jurisdiction over the Project.
- 6.5 The Working Drawings and Specifications and other documents necessary for going out to bid shall be submitted to the City after approval of Design Development Documents.
- 6.6 The Architect shall prepare and furnish twenty (20) sets of the contract drawings and eighteen (18) copies of specifications ready for review at the architect's expense. The Architect shall also provide an electronic copy of all documentation.

Duration: five (5) weeks

7.0 PHASE VI - BIDDING

- 7.1 The Architect, following the City's written approval of the Construction Documents and of the latest Statement of Estimated Construction Costs, shall assist the City in obtaining bids or proposals and in awarding and preparing construction contracts.
- 7.2 The Architect shall prepare and furnish within (2) two weeks of acceptance of Phase V, Construction Documents, five (5) sets of the City of Newton approved contract drawings and five (5) copies of specifications ready for bid at the Architect's expense. The Architect shall also prepare and furnish within two (2) weeks of acceptance of Phase V, Construction Documents, in a number to be determined by the City, of the plans and specifications. The Architect shall also provide an electronic copy of all documentation.
- 7.3 The Architect shall receive all inquiries relating to the bidding documents and when necessary answer questions by addenda. The Architect shall provide copies of all addenda to the Public Buildings Department as well as to the City's Purchasing Department.
- 7.4 The Architect shall attend Pre-Bid conferences and Bid openings.
- 7.5 If the bid of the lowest eligible and responsible bidder exceeds the established Construction Budget, the Architect shall, if instructed in writing by the Owner or his representative, revise the scope or quality of the project for the purposes of bringing the cost within this limit. These revisions, and any re-bid for cost purposes shall be made without additional compensation to the Architect.

8.0 PHASE VII - CONSTRUCTION - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- 8.1 The Construction Phase will commence with the award of the Construction Contract and will terminate when the final Certificate for Payment is issued to the City, and the City has given written notice of its formal acceptance of the Project as completed.
- 8.2 The Architect, as the representative of the City during the construction phase, shall advise and consult with the City and all of the City's instructions to the Contractor shall be issued through the Architect.
- 8.3 The Architect shall at all times have access to the work wherever it is in preparation or progress.
- 8.4 The Architect shall make weekly visits to the site to familiarize himself generally with the progress and the quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents. The Architect, based upon the observation of the

construction, shall guard the City against defects and deficiencies in the work of the Contractor.

- 8.5 Based on such observations at the site and on the Contractor's Applications for Payment, the Architect shall approve or disapprove the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the City, based on the Architect's observations at the site and on the data comprising the Application for Payment, that the work has progressed to the point indicated; that to the best of the Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); that the Architect has checked and approved the monthly requisition for payments prepared by the Contractor during the construction; and that the Contractor is entitled to payment in the amount certified.
- 8.6 The Architect shall be, in the first instance, the interpreter of the technical requirements of the Contract Documents and the impartial judge of the performance thereunder by both the City and Contractor. The Architect shall make timely decisions on all claims of the City or Contractor relating to the Execution and progress of the work and on all other matters or questions related thereto.
- 8.7 The Architect shall have authority to reject work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the Contract Documents, he will have authority to require special inspection or testing of any work in accordance with the provisions for the Contract Documents whether or not such work is fabricated, installed or completed.
- 8.8 The Architect shall review and approve shop drawings, samples, and other submissions of the Contractor for conformance with the requirements of the plans and specifications of the Project and for compliance with the information given in the Contract Documents and furnish one (1) copy of each to the City. These drawings shall be checked by the Architect and returned to the Contractor within ten (10) working days after receipt by him, unless a longer time is approved by the Public Buildings Commissioner.
- 8.9 The Architect shall prepare all Change Orders and shall issue all Change Orders only after consultation with and receipt of the written approval of the Public Buildings Commissioner for each change order.
- 8.10 The Architect shall maintain Project records in an orderly manner, including but not limited to, complete and accurate records of the Architect's observations of construction progress, Project correspondence, applications for payment and certifications for payment, change orders, change directives, change proposals, deficiency notices, Project meeting minutes, submittals including shop drawings, product samples, reports and other



documents prepared or received by the Architect and its Consultants in connection with the Project. The City and its representatives shall have the right to inspect such Project records at any time and to obtain copies thereof at no cost.

#### 9.0 ADDITIONAL SERVICES

- 9.1 Making major revisions to Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City and are due to causes beyond the control of the Architect.
- 9.2 Providing professional services made necessary by the default of the Contractor due to delinquency or insolvency, or by major defects in the work of the Contractor in the performance of the Construction Contract and through no fault of the Architect.
- 9.3 If any Design Work is added or requested by the City to this Agreement beyond what is included in the Architectural Programming, the Public buildings Commissioner and the Architect shall negotiate the fee for such additional services.
- 9.4 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.
- 9.5 Payment of the Architect for any additional services pursuant to this Agreement is subject to appropriation.
- 9.6 The City may, from time to time, require changes in the amount of the Architect's responsibilities under this contract. Such changes, including any increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by the City and the Architect shall be incorporated by written amendment to this Agreement. Neither the Architect nor its consultants shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Architect or the consultant in the preparation of bid documents (plans and specifications), in accordance with the provisions of General Laws, chapter 7, Section 38H (ii)(j), nor shall the Architect or its consultants be compensated for any services resulting from the defective design work of the Architect, all as reasonably determined by the Public Buildings Commissioner of the City.

#### 10.0 THE CITY'S RESPONSIBILITIES

- 10.1 The City shall provide full information regarding its requirements for the project and shall furnish to the Architect known and available survey data and information which is required by the Architect for the preparation of the design of the Project.
- 10.2 The City designates the Public Buildings Commissioner as its representative authorized to act in its behalf with respect to the Project, but the Public Buildings Commissioner shall not thereby assume personal liability. The Public Buildings Commissioner shall examine

documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's work.

- 10.3 The City shall furnish information required as expeditiously as necessary for the orderly progress of the work.

11.0 CONSTRUCTION COST

- 11.1 Upon request of the Public Buildings Commissioner, the Architect shall recommend material, equipment, component systems and types of construction which are to be included in the Contract Documents in order to bring the Construction Cost within the fixed limit as stated in the Contract Documents.

- 11.2 If the lowest responsible bid exceeds such fixed limit of Construction Cost established as a condition of this Agreement, the City shall (1) give written approval of an increase in such fixed limit, (2) authorize re-bidding the project within a reasonable time for cause, or (3) cooperate in revising the Project scope and quality as required to reduce the probable Construction Cost. In the case of (3), the Architect, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the fixed limit.

12.0 DIRECT PERSONNEL EXPENSE

- 12.1 Direct Personnel Expense of employees engaged on the Project by the Architect shall include architects, engineers, designers, job captains, draftsmen, specification writers and typists, used in consultation, research and design, in producing drawings, specifications and other documents pertaining to the Project, and in services during construction at the site.

- 12.2 Direct Personnel Expense includes cost of salaries only and is exclusive of any other costs.

13.0 REIMBURSABLE EXPENSES

- 13.1 Reimbursable Expenses are in addition to the Architect's Basic and Additional Services and shall include actual expenditures made by the Architect, his employees, or his professional consultants in the interest of the Project provided that the City has given prior written approval.

14.0 PAYMENTS TO THE ARCHITECT

- 14.1 Payments on account of the Architect's Basic Services shall be made as follows:
- 14.2 Payment for Basic Services shall be made monthly in proportion to services performed so that the compensation of each Phase shall equal the percentages of the total Basic Compensation as indicated in Schedule B.

- 14.3 Payment for Additional Services of the Architect as defined in Paragraph 9.0 shall be made monthly upon presentation of the Architect's statement of services rendered and the approval of same by the Public Buildings Commissioner and subject to appropriation by the Board of Aldermen.
- 14.4 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors where the Architect is not at fault as determined by the Public Buildings Commissioner.
- 14.5 If the Project is suspended for more than three months or abandoned in whole or in part, the Architect shall be paid his compensation for services performed. Supervision of construction and payment therefore to the Architect may be suspended by the City in the event of strikes, acts of God, or other causes beyond the control of the City and the Architect.
- 14.6 Payment for the Architect's Direct Personnel Expense, and Reimbursable Expenses shall be in accordance with Paragraph 12 and Paragraph 13, respectively.

15.0 ARCHITECT'S ACCOUNTING RECORDS

- 15.1 The Architect shall maintain financial records in accordance with a generally recognized accounting method which financial records shall include the Architect's Direct Personnel Expense and Reimbursable Expenses pertaining to the Project. The Architect shall make such financial records available for review at a mutually convenient time by the Public Buildings Commissioner, the Comptroller of the City of Newton, or the authorized representative of either, upon twenty-four (24) hours prior notice.

16.0 OWNERSHIP OF DOCUMENTS

- 16.1 All studies and materials prepared under this Agreement shall be the property of the City and at the termination of the Architect's services shall be promptly turned over to the City. These items shall include, but are not be limited to, originals of drawings, specifications, reports, etc.

The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and other work developed in the performance of this Agreement, including the right to use the same to complete or renovate the project for which they were prepared by the Architect without additional cost to the City; and with respect thereto the Architect agrees and hereby grants to the City an irrevocable royalty-free license to all such data which may be covered by the Architect's copyright and to all designs as to which the Architect may assert any rights or establish any claims under any patent or copyright laws. The Architect shall not be responsible for changes made in the documents without the Architect's authorization, nor for the City's use of the documents if such use does not involve the services of the Architect pursuant to this Agreement.

17.0 PROFESSIONAL LIABILITY INSURANCE; INDEMNIFICATION

- 17.1 The Architect shall at his own expense obtain and maintain a Professional Liability Policy for errors, omissions or negligent acts of the Architect, or of any person or business entity for whose performance the Architect is legally liable, that arise out of the performance of the services required under this Agreement. The minimum amount of such insurance shall be equal to ten percent (10%) of the construction cost of each project authorized under this Agreement and, in any event, not less than \$1,000,000.

All insurance coverage required in this Section shall be in effect during the term of this Agreement. Certificates of all insurance by this Agreement, as well as all renewals of such insurance, shall be supplied to the Public Buildings Commissioner, and the City shall be named the Certificate Holder.

In addition, the Architect shall carry general liability insurance and workmen's compensation insurance and should provide the City with a Certificate of Insurance, acceptable to the City. Such liability insurance shall be in a minimum amount as follows:

General Liability, including Bodily Injury and Property Damage in an aggregate amount of \$500,000 or greater. The General Liability policy shall include endorsements showing the following types of coverage: Comprehensive Form, Premises Operations, Contractual Insurance, Broad Form Property Damage and Independent Contractor.

The City shall be named an additional insured party under the General Liability Policy.

The Architect's insurance coverage shall also include valuable papers insurance for the restoration of plans, drawings, field notes and other documents in the event of loss or destruction while in custody of the Architect in an amount sufficient to cover the cost of restoration.

- 17.2 The Architect shall indemnify, defend and hold harmless the City and its officers, employees, servants and agents against all claims, damages, losses or expenses of whatever kind or nature, including attorney fees, for or on account of any injuries to persons or damage to property to the extent that the same arises out of or results from the services of the Architect, or the services of any person or business entity for whose performance the Architect is legally liable, rendered pursuant to this Agreement, regardless of whether caused in part by the party indemnified hereunder.

18.0 ARCHITECT CERTIFICATION

- 18.1 In accordance with the provisions of General Laws, Chapter 7, Section 38H(e):
- (i) Neither the Architect or its consultants has given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment for an inducement for, or in conjunction with, the Award of this Agreement.

- (ii) No person, corporation or other entity, other than a bona fide full time employee of the Architect has been retained or hired by the Architect to solicit for or in any way assist the Architect in obtaining this Agreement upon entities shall be paid a fee or other consideration contingent upon the award of this Agreement to the Architect; and
- (iii) The Architect has internal accounting controls as required by General Laws, Chapter 30, Section 39R (c) and the Architect has filed and will continue to file an audited financial statement as required by General Laws, Chapter 30, Section 39R (d).

19.0 WAIVER OF WORKMEN'S COMPENSATION AND UNEMPLOYMENT  
COMPENSATION BENEFITS

- 19.1 It is agreed that neither the Architect nor its employees, agents, servants or other persons for whose conduct the Architect is responsible shall be deemed to be employees of the City and neither it nor shall they file any claim nor bring any action for workmen's compensation or unemployment benefits or other compensation for which it or they may otherwise be eligible as a result of work performed pursuant to the terms of this Agreement. At the time of the execution of this Agreement, the Architect shall provide a Certificate of Insurance showing that its employees are covered for workmen's compensation, in the statutory amounts required by the Commonwealth of Massachusetts.

20.0 TERMINATION OF AGREEMENT

- 20.1 Termination for Cause. This Agreement may be terminated by the City upon seven (7) days written notice should the Architect fail to substantially perform in accordance with the terms of the Agreement as determined by the Public Buildings Commissioner.
- 20.2 Termination for Non-Appropriation: The City's obligations pursuant to this Agreement are subject to the appropriation of the necessary funds, except to the extent that the availability of funds has been certified by the City Comptroller. If for any fiscal year or any part thereof during the term of this Agreement, funds for the discharge of the City's obligations under this Agreement are not appropriated and authorized, or funds so appropriated and authorized are reduced or withdrawn, then this Agreement shall terminate. In the event of such non-appropriation, reduction or withdrawal of funding, the City shall notify the Architect of the same and this Agreement shall terminate as of the date stated in said notice or as of the date when such appropriated or authorized funds are exhausted or withdrawn, whichever is later, without liability to the City for damages, penalties or other charges on account of such termination.
- 20.3 In the event of a termination due to non-appropriation, reduction in or withdrawal of funding, the City shall pay the Architect for only those services completed to the effective date of termination up to the amount of funds actually appropriated.

- 20.4 If partial funding sufficient for a clearly separate or separable task (or tasks) should be made available, the parties may agree to perform their respective obligations relative to such task(s), and this Agreement shall be amended accordingly.
- 20.5 Termination for Convenience. The City may terminate this Agreement at any time by giving written notice to the Architect of such termination and specifying the effective date of such termination. Such notice shall be given not less than seven (7) days prior to the effective date of termination. In event of termination for convenience, all finished or unfinished documents and other materials shall, at the option of the city, become its property. If the Agreement is terminated for convenience, the City shall pay the Architect for only those services completed to the effective date of termination.

21.0 SUCCESSORS AND ASSIGNS

- 21.1 This Agreement shall be binding upon the City, its successors and assigns and the Architect, its partners, successors, assigns and legal representatives. Neither the City nor the Architect shall assign, sublet or transfer any obligation or duty set forth herein nor any interest in this Agreement without the prior written consent of the other.

22.0 EXTENT OF AGREEMENT

- 22.1 This Agreement represents the entire and integrated agreement between the City and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Architect.

23.0 GOVERNING LAW

- 23.1 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

24.0 ATTACHMENTS

- 24.1 Attached hereto are the following schedules which are incorporated into this Contract and made a part hereof.

Schedule A – *Not used.*

Schedule B – Compensation and Method of Payment

Schedule C - Satisfaction of State Tax Requirements Attestation Form

Schedule D - Certificate of Authority – Business Corporations

Schedule E - Design Review Committee Ordinance (Section 5-54 through 5-58)

SIGNATORIES

IN WITNESS WHEREOF the parties hereto have executed this Agreement in quintuplicate on the day first written above. No agreement shall exist until this Agreement has been signed by all parties.

ARCHITECT

CITY OF NEWTON

\_\_\_\_\_

\_\_\_\_\_  
Public Buildings Commissioner

I hereby certify that funds are available  
for this Agreement within Account No.

Approved as to legal form and character

\_\_\_\_\_  
in the amount of \_\_\_\_\_

\_\_\_\_\_  
Associate City Solicitor

\_\_\_\_\_  
Comptroller of Accounts

CONTRACT APPROVED

\_\_\_\_\_  
Setti D. Warren, Mayor or his designee

## SCHEDULE B

### COMPENSATION AND METHOD OF PAYMENT

The City shall compensate the Architect as follows:

#### BASIC COMPENSATION

For Basic Services as described in Sections 1.0 through 8.0 and elsewhere in the Agreement, Basic Compensation shall be a fixed fee of XXXXXX Dollars (\$XXXX), payable to the Architect in monthly installments after approval by the City of the Architect's request for payment. All payments for Services shall be made in accordance with this Schedule B as well as Sections 12 through 14.

Payments for Basic Services shall be made in proportion to the Services performed, and Basic Compensation for each phase shall not exceed the following percentages of the total Basic Compensation:

Phase I	Work Plan & Phase II Site and Environmental Analysis/Architectural Programming:	%
Phase III	Schematic Design:	%
Phase IV	Design Development:	%
Phase V	Construction Documents:	%
Phase VI	Bidding:	%
Phase VII	Construction Administration:	%

#### COMPENSATION FOR ADDITIONAL SERVICES

At the option of the City, compensation to the Architect on account of Additional Services shall be on the basis of (i) an agreed upon lump sum amount, or (ii) hourly billing rates as set forth below, which billing rates are all-inclusive, or other billing rates agreed upon in writing by the City and the Architect. Unless the City otherwise approves in writing, compensation to the Architect on account of Additional Services shall be on the basis of agreed lump sum amounts. Unless otherwise stated in the City's written authorization for the performance of Additional Services, the Architect may request payment for Additional Services on a monthly basis based upon the Services performed and costs incurred by the Architect.

The hourly billing rates of the Architect's and its Consultants' principals and employees as set forth in this Schedule B shall be fixed for the duration of this Agreement.



## HOURLY BILLING RATES

Principal	_____
Senior Management	_____
Project and Department Manager	_____
Senior Engineer/Architect	_____
Design Engineer/Architect	_____
Design Draftsperson	_____
Draftsperson	_____
Others	_____

For additional Services of Consultants, the Architect's compensation shall be equal to XXX times the amounts billed to the Architect for such services.

## REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 13, the reimbursement amount payable by the City shall be equal to the actual direct cost of the Reimbursable Expense without a mark-up to the actual direct cost. The City shall not be required to compensate the Architect for Reimbursable Expenses unless and until the Architect provides to the City written invoices, receipts or other written evidence satisfactory to the City evidencing such Reimbursable Expenses incurred by the Architect.

SCHEDULE C

SATISFACTION OF STATE TAX REQUIREMENTS

ATTEST FORM

Pursuant to M.G.L. Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

\_\_\_\_\_  
Social Security Number or  
Federal Identification Number

\_\_\_\_\_  
Signature of Individual or Corporate  
Name

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Corporate Officer (if applicable)

SCHEDULE D

CERTIFICATE OF AUTHORITY - BUSINESS CORPORATIONS

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_  
(name of corporation)  
held on \_\_\_\_\_ at which all Directors were present or waived notice, it was voted  
that, \_\_\_\_\_ (name) of this company be and be hereby is authorized to  
execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal  
thereto, and such execution of any contract of obligation in this company's name on its behalf by  
such \_\_\_\_\_ under seal of the company, shall be valid and binding upon this  
company.

A TRUE COPY

ATTEST (clerk or secretary

\_\_\_\_\_  
Place of Business

I hereby certify that I am the clerk/secretary of the \_\_\_\_\_  
(name of company)  
that is the duly elected \_\_\_\_\_ of said company, and the above vote  
has not been amended or rescinded and remains in full force and effect as of \_\_\_\_\_,  
the date on which the corporation's authorized representative, named above, affixed his/her  
signature to this contract.

Clerk or Secretary  
(Corporate Seal)

## NEWTON CODE — BUILDINGS

committee as is necessary for the exercise of the committee's responsibilities. Records of the committee shall be public documents. The committee shall make reports no less than annually to the respective appointing authorities. (Rev. Ords. 1973, § 2-348; Ord. No. 190, 12-20-76; Ord. No. 317, 2-20-79; Ord. No. S-301, 2-1-88)

**Secs. 5-38—5-53. Reserved.**

### ARTICLE IV. DESIGN REVIEW COMMITTEE

**Sec. 5-54. Established.**

(a) A design review committee is hereby established to coordinate the design review process for any public facility which has been submitted to the committee by the mayor, board of aldermen or any other public agency or committee within the city.

(b) The design review committee shall examine the specifications prepared by the using agency and shall consult with the planning, public buildings and other city departments, or if appropriate, may request the public buildings commissioner to hire outside consultants to assist the design review committee in studying the feasibility of the proposed facility and shall consider to the extent the committee deems appropriate a range of solutions such as renewal, renovation or replacement within realistic budgetary limits and shall make a recommendation. The design review committee's study of the feasibility of the proposed facility shall include a review of indoor environmental health issues. The design review committee may make recommendations for specific program requirements for the proposed facility to address indoor environmental health issues. The design review committee shall include in its feasibility study a review of the proposed facility's use of natural resources and energy. The design review committee may make recommendations as to site planning, building design, or construction that contribute significantly to the proposed facility's efficient use and conservation of natural resources and energy. Whenever an architect is proposed to be engaged by the city in any design or consulting capacity, the design review committee shall review the contract between the city and the architect prior to its execution to assure that the scope of the work,

as described in said contract, complies with the program requirements for the proposed public facility.

(c) The design review committee shall review the architect's solution for compliance with the program and time schedule requirements and shall evaluate the quality, appropriateness and functional attributes of the architect's solution. The committee shall have periodic meetings with the architect and hold periodic presentations and reviews and shall make reports as the project moves through the various stages of design to contract development. Prior to the issuance of bid documents, design review recommendations to the architect shall be made by the design review committee in writing to the commissioner of public buildings for his approval and issued from his office. The commissioner of public buildings shall not permit the construction contract to be advertised for public bid until the design review committee certifies in writing that the plans and specifications substantially meet the program requirements of the project.

(d) During the construction of the public facility, the commissioner of public buildings shall consult with the design review committee concerning any changes in the plans or specifications that may affect the design or program of the facility and the committee shall act promptly on all matters before it. (Rev. Ords. 1973, § 2-361; Ord. No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88; Ord. No. V-216, 12-21-98; Ord. No. Y-29, 7-9-07)

**Sec. 5-55. Composition, appointment and compensation of members.**

(a) Voting membership. The design review committee shall consist of twelve (12) permanent voting members, four (4) appointed by the mayor, four (4) selected by the board of aldermen, and four (4) selected by the school committee. There shall be two (2) additional voting members for each facility under design review, who are community representatives who shall represent the interests of the community in which the proposed facility is to be located, and who reside in the immediate area of the facility. One community representative shall be appointed by the mayor and one shall be selected by the board of aldermen. In the event that more than one facility shall comprise a project, and where the

board of aldermen determines that the resulting number of community representatives for said project is unreasonably large, it may reduce the total number of community representatives required to not fewer than two. (Ord. No. R-142, 4-21-81)

(b) Nonvoting membership. There shall be the following nonvoting members of the design review committee: one alderman, one school committee member for school department building projects, the planning director or his designee, the head of the using agency or his designee, and the public buildings commissioner or his designee. The public buildings commissioner shall also serve as secretary of the design review committee. (Rev. Ords. 1973, § 2-362; Ord. No. 8, 8-12-74; Ord. No. S-301, 2-1-88)

**Cross references**—Regulations governing appointment and service on commissions and committees, § 2-8

**Sec. 5-56. Terms, vacancies and rules.**

(a) The members of the design review committee, excepting the community representatives, shall serve coterminous with the terms of their respective appointing authority. Vacancies in the committee shall be filled by appointment in the same manner by the same designated appointing authority as the original appointments for the period of the unexpired term. The term of community representatives shall expire upon final acceptance by the city of the facility for which they were appointed.

(b) The design review committee shall have such assistance as is reasonably necessary for the exercise of its responsibilities provided by the department of public buildings. The records of the design review committee shall be public documents. The design review committee shall elect a chairman annually and establish rules and procedures. Members shall serve at the pleasure of their respective appointing authority.

(c) It is the intent of this section that those participating in the design review process as voting members shall be a diversified group of interested citizens, independent of and not directly employed by city government, and that some of these members shall be professionally qualified.

(d) To the extent that citizens make themselves

available to serve, there shall be at least one (1), but not more than two (2) voting members from each of the following professions: architect, general construction manager, electrical engineer, mechanical engineer, structural engineer, landscape architect. Professional qualifications of voting members are desirable in the fields of city planning, traffic engineering and real estate development, but shall not be required.

(e) Whenever a vacancy in voting membership occurs, the appointing authority shall make inquiry of the public buildings commissioner and the chairman of the design review committee as to whether an appointee with particular professional qualifications is required, and after written response, the appointment shall be made so that the membership of the design review committee will be professionally balanced and will comply with the requirements and the intent of this section. Community representatives shall be appointed without regard for professional qualifications.

(f) No voting member of the design review committee shall hold an elected or salaried position with the city.

(g) All members shall serve without compensation and all voting members shall be residents of the city. All members shall serve until their successors take office.

(h) The two (2) voting members who are community representatives shall vote only on those matters concerning facilities for which they are appointed. (Rev. Ords. 1973, § 2-363; Ord. No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88)

**Sec. 5-57. Other provisions.**

Any public corporation, agency, authority, commission or body of any such private organization which is empowered to construct a public or quasi-public facility within the city and which desires to submit itself to the jurisdiction of the design review committee, may enter into an agreement, in writing, with the city for this purpose, and thereafter the design review committee shall perform all of its functions and duties with respect to such facility. (Rev. Ords. 1973, § 2-364; Ord. No. 8,

NEWTON CODE — BUILDINGS

8-12-74)

**Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities.**

It shall be the policy of the city to apply similar standards of planning and control of density and environmental impact, when the city's public buildings and facilities are constructed or modified, as the city applies under chapter 30, Zoning, of the Revised Ordinances when petitions for changes in land use are initiated by its citizens or property owners. In implementing this policy for land in the public use district or otherwise classified city land, the prior establishment of a zoning classification or district (in accordance with section 30-4 of these Revised Ordinances) shall not be required.

(a) Whenever construction or modification of a municipal building or facility is undertaken which involves new construction or substantial change in usage, and which involves a change in: vehicular access; off-street parking requirements; site grading; drainage; landscape features; or service areas, the following procedures shall apply:

- (1) The executive department shall include in the architect's contract the requirement for preparation and submission of site plans suitable for review and approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances.
- (2) The department of planning and development shall maintain cognizance over the development of specifications, conceptual designs and site plans to determine the consistency and compatibility of such designs and plans with the city's comprehensive plan and other pertinent planning and analytical studies. The director of planning and development shall make written notification of this finding to the mayor, to the clerk of the board of aldermen, to the design review committee, and (in the case of school buildings) to the secretary of the school committee.
- (3) The design review committee shall consider the project plans, designs, and specifications

not only in terms of the details of layout and construction of the building or facility, but also in terms of the site and its surrounding area. Consultations shall be made with such city departments and neighborhood groups as are considered necessary and appropriate.

- (4) Upon its approval of the initial design concept and prior to recommending that the project proceed to the detailed design phase and to the preparation of construction drawings, the design review committee shall file with the clerk of the board of aldermen its approved site plan including building floor plans and architectural schematics, along with a formal petition for site plan approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances. The design review committee shall not be required to pay a filing fee for purposes of this section.
- (5) At the earliest opportunity, the board of aldermen shall for the purposes of this section assign that petition for public hearing before its committee dealing with matters of public buildings and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the proposed building or facility and to the abutters of such abutters. The committee shall deliberate and negotiate such changes to the site plan and affix such restrictions and conditions as are in the public interest, and it shall make its report to the board of aldermen within forty-five (45) days following the public hearing.
- (6) The site plan, including building floor plans and architectural schematics, as formally approved by the board of aldermen and the mayor (and in the case of school buildings, by the school committee) shall become part of the final set of project plans and construction drawings, and they shall not be changed or altered in any manner without first being resubmitted to the design review committee and to the board of aldermen in accordance with steps (3), (4) and (5) above. The board of aldermen may waive a public hearing on a previously approved site plan if

in its judgment the changes proposed are not of sufficient scope as to warrant a public hearing.

(b) The board of aldermen shall not approve an appropriation of any funds for preparation of detailed construction drawings for a project applicable under this section until the requirements of (a)(1) through (a)(6) above have been satisfied.

(c) The executive department shall not formally submit a project applicable under this section to

competitive construction bid unless the requirements of (a)(1) through (a)(6) have been satisfied.

(d) The requirements of this section that are not otherwise required by law or by the charter may be waived in whole or in part by a two-thirds (2/3) vote of those members of the board of aldermen present and voting. (Rev. Ords. 1973, § 2-365; Ord. No. 8, 8-12-74; Ord. No. 102, § 4, 12-15-75; Ord. No. V-195, 9-22-98)





Attachment D

*City of Newton*

*Designer Selection Committee*

Designer Selection Procedures  
(Adopted *October 26, 2004*)

1. These procedures govern the selection of designers for any municipal building project subject to the state designer selection law, M.G.L. c. 7, §38A1/2-O or subject to the provisions of §11-8 of the City of Newton Charter. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. The Designer Selection Committee [hereinafter referred to as the "Committee"] has the authority to conduct the designer selection process for the City of Newton (hereinafter referred to as the "City") pursuant to the provisions of §11-8 of the City of Newton Charter and §§ 5-35 – 5-38 of the Revised Ordinances of the City of Newton, 2001. The Committee may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Committee shall conduct the designer selection process.

No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:

- a. has a direct or indirect financial interest in the award of the design contract to any applicant;
  - b. is currently employed by, or is a consultant to or under contract to, any applicant;
  - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
  - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Committee, at least two weeks before the deadline for filing applications.
  5. The advertisement shall contain the following information:

- a. a description of the project, including the specific designer services sought, the estimated construction cost, and the time period within which the project is to be completed;
  - b. if there is a program for the building project, a statement of when and where the program will be available for inspection by applicants;
  - c. when and where a briefing session (if any) will be held;
  - d. the qualifications required of applicants;
  - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
  - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
  - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the [Application to Designer Selection Committee Form](#). The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
  - a. prior similar experience;
  - b. past performance on public and private projects;
  - c. financial stability;
  - d. identity and qualifications of the consultants who will work with the applicants on the project;
  - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so. The Committee may determine that it is in the best interest of the City to reject all applicants and re-issue the RFQ.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Mayor. No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, §44C, shall be included as a finalist on the list.

The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation, which may be the record or the minutes of the Commission's meeting at which the selection was made, and recorded vote, if any, shall be public records and shall be maintained in the contract file of the designer selected by the Mayor.
10. If the fee was set prior to the selection process, the Mayor shall select a designer from the list of finalists. If the Mayor selects a designer other than the one ranked first by the Committee, the Mayor shall file a written justification for the selection with the Committee and maintain a copy in the contract file. In accordance with the provisions of

§5-35 of the Revised Ordinances of the City of Newton, 2001, the Mayor may request three (3) additional recommendations from which he may make his selection.

11. If the fee is to be negotiated, the Mayor shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Mayor shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Mayor is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Mayor prior to selection of finalists.
12. If the Mayor is unable to negotiate a satisfactory fee with any of the finalists, in accordance with the provisions of §5-35 of the Revised Ordinances of the City of Newton, 2001, the Mayor may request three (3) additional recommendations from which he may make his selection.
13. The City may allow a designer who conducted a feasibility study to continue with the project design, provided that an independent review by a knowledgeable and competent individual or firm doing such work finds the feasibility designer's work to be reasonable and adequate. The City must first advertise for the feasibility study. The City may include a statement in the advertisement and/or RFQ that the feasibility study designer is eligible to compete for the subsequent design services contract. Once the study is complete, the City may publish a second advertisement for the project design. If the feasibility designer is selected, the City may commission the independent review prior to allowing the designer to proceed with the work.
14. Every contract for design services shall include the following:
  - a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
  - b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
  - c. certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity

- be paid a fee or other consideration contingent upon the award of the contract to the designer; and
- d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

15. The City shall not enter into a contract for design services unless the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million (\$1,000,000) dollars or ten percent (10%) of the project's estimated cost of construction, or such larger amounts as the City may require, for the applicable period of limitations. A designer required by the City to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the City prior to the award of the contract.
16. Every contract for design services shall include a provision that the designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.
17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Committee may elect to authorize expedited procedures to address the emergency. The Committee shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

The Committee may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Committee shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The City shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the City:
  - a. all information supplied by or obtained about each applicant;
  - b. all actions taken relating to the project; and

c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

The City shall evaluate designers' performance on contracts in accordance with M.G.L. c. 7, §38E(g).